

APPEAL NO. 041293  
FILED JULY 21, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 27, 2004. The hearing officer determined that: (1) the respondent (carrier) is relieved from liability under Section 409.002 because of the appellant's (claimant) failure to timely notify her employer pursuant to Section 409.001, and did not have good cause for failing to do so; (2) because the claimant did not give notice timely, the claimant did not have a compensable injury on \_\_\_\_\_; and (3) because the claimant did not give notice timely, the claimant did not have disability. The claimant appealed the adverse determinations based on sufficiency of the evidence, and requests that the Appeals Panel contact a witness to support her case. The carrier responded, urging affirmance.

DECISION

Affirmed, as reformed.

We first address the claimant's request that the Appeals Panel contact the claimant's former Customer Service Manager, CP, to provide information regarding her injury and notice to her employer of her injury. Review of the record indicates that the claimant had rested her case, when she requested that CP be called as a rebuttal witness. The witness was contacted by telephone, however she was not in her office and unavailable to testify. The record reflects that the claimant did not request a continuance to secure the testimony of CP. In Texas Workers' Compensation Commission Appeal No. 94358, decided May 11, 1994, the Appeals Panel noted that the decision to present evidence or not present evidence is the responsibility of the claimant. The claimant was given ample opportunity to meet her burden of proof on the disputed issues.

The claimant had the burden to prove that she sustained a compensable injury as defined by Section 401.011(10); that she gave timely notice of injury to the employer pursuant to Section 409.001; and that she has had disability as defined by Section 401.011(16). Conflicting evidence was presented on the disputed issues. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer commented in the Background Information that she was not persuaded by the claimant's testimony regarding the timely notice issue. We conclude that the hearing officer's determinations on the disputed issues are supported by sufficient evidence and that they are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We reform Conclusion of Law No. 3 and the Decision to correct an obvious typographical error. Conclusion of Law No. 3 and the decision are reformed to read that the carrier is relieved from liability under Section 409.002 because of the claimant's failure to timely notify her employer pursuant to Section 409.001.

We affirm the hearing officer's decision and order, as reformed.

The true corporate name of the insurance carrier is **ROYAL INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS STREET, SUITE 750  
AUSTIN, TEXAS 78701.**

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Veronica L. Ruberto  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge